
Remarks / Arguments & Status

The application presently contains the following claims:

<u>Independent Claim #</u>	<u>Dependent Claim #s</u>
1	
2	3-15

Claims 1-15 were examined by the examiner. No claims are amended within this Amendment Response. No claims are newly added.

Applicant's agent thanks the examiner for removing the previous rejections based upon §112 and §102.

Double Patenting Rejection & Responsive Arguments

The examiner has upheld the rejection of claims 1-15 under this section, on the ground of nonstatutory obviousness-type double patenting and being unpatentable over claims 1-11 and 13-15 of U.S. Patent No. 6,602,526 ("526 Patent"). The examiner asserts that while the claims are not identical, they are not patentably distinct from each other because the instant claims are drawn to an oral composition comprising Lotus seed extract with a compatible vehicle for oral application.

The examiner asserts a terminal disclaimer would allow this rejection to be removed, however, the applicant's agent believes the terminal disclaimer is unnecessary. Applicant's agent believes that the present claims are patentably distinct from the claims of the '526 Patent. Applicant's agent requests the examiner reconsider this rejection in light of the arguments presented below.

35 U.S.C. §103 Rejection & Responsive Arguments

The examiner has rejected claims 1-15 under this section, subparagraph (a) as being unpatentable over U.S. Patent Application Publication 2002/0098253. The examiner represents that the '253 Publication teaches therapeutic oral and topical compositions of Sacred Lotus Seed (Methyltransferase) in dietary supplements in tablet form, which is a compatible vehicle for oral application. The examiner further represents that it would have been obvious to one of ordinary skill in the art at the time the invention was made to prepare a therapeutic Sacred Lotus Seed

extract composition based upon the beneficial teachings provided by the '253 Publication, and the adjustment of particular conventional working conditions is deemed merely a matter of judicious selection and routine optimization which is well within the purview of the skilled artisan.

The applicant's agent respectfully reasserts that the examiner may have misinterpreted the teachings of the '253 Publication. The '253 Publication does not teach of a topical composition containing two forms of Sacred Lotus, as is presently claimed in this application. As stated earlier, the '253 Publication indicates that the oral composition taught within the '253 Publication can be taken alone, or in combination with topical treatments different from the oral composition of the '253 Publication [Par. 0060 of the '253 Publication]. The '253 Publication does not in itself teach of a topical composition.

Paragraph 0060 of the '253 Publication states:

Moreover, it should be understood by those versed in this art that the present invention contemplates treating the skin with either the oral compositions of this invention alone or concomitantly administering the topical compositions such as described in U.S. Pat. No. 5,925,348 for enhanced benefits. It is believed that when both the oral composition of the present invention and topical routes are administered, such combination therapy will promote both good health and radiant skin, especially when the oral compositions include micronutrients, such as in the oral composition set forth in Examples hereinafter.

This is the only mention of any topical formulation within the '253 Publication. Paragraph 0060 clearly shows that there is no teaching of the formulation of the '253 Publication being administered as a topical formulation, but instead teaches that the oral formulation taught by the '253 Publication may be administered concomitantly with some other topical formulation, such as the topical formulation described in U.S. Pat. No. 5,925,348 ('348 Patent). The inventor of the '253 Publication suggested taking the oral composition of the '253 Publication in conjunction with other topical compositions, without teaching that the composition of the '253 Publication be administered as a topical formulation itself. This in itself shows that it was not obvious to the inventor, as one of ordinary skill in the art, that the composition of the '253 Publication be prepared as a topical formulation.

The '253 Publication also contains no teaching of combining two portions of the Lotus plant. The present application currently claims a composition that claims a combination of the extract of a lotus seed and the extract of a lotus flower. The '253 Publication does not teach of the combination of two parts of the Lotus plant, and only teaches of a composition that is composed of the extract of a lotus seed.

The applicant's agent respectfully requests the examiner reconsider the rejection under this section in view of the amended claims

Request for Reconsideration

Applicant believes that all independent claims clearly define over the prior art and that the distinctions between the present invention and the prior art would not have been obvious to one of ordinary skill in the art. Additionally, the remaining dependent claims, by the limitations contained in the base independent claims, are felt to be patentable over the prior art by virtue of their dependency from independent claims which distinguish over the prior art of record. All pending claims are thought to be allowable and reconsideration by the Examiner is respectfully requested.

Fee Determination Record

A fee determination sheet is attached for this amendment response. The Commissioner is hereby authorized to charge any additional fee required to effect the filing of this document to Account No. 50-0983.

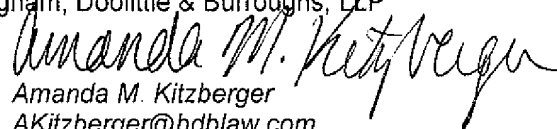
Conclusion

Applicant believes that all independent claims clearly define over the prior art and that the distinctions between the present invention and the prior art would not have been obvious to one of ordinary skill in the art. Additionally, the remaining dependent claims, by the limitations contained in the base independent claims, are felt to be patentable over the prior art by virtue of their dependency from independent claims which distinguish over the prior art of record. All pending claims are thought to be allowable and reconsideration by the Examiner is respectfully requested.

It is respectfully submitted that no new additional searching will be required by the examiner. A fee determination sheet is attached for this amendment response. The Commissioner is hereby authorized to charge any additional fee required to effect the filing of this document to Account No. 50-0983.

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Respectfully Submitted,
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